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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,583	03/19/2002	Louise Georgina Buttle	8830-10 (157952)	1753

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DRINKER BIDDLE & REATH
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EXAMINER

YOUNG, MICAH PAUL

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/24/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/009,583

Applicant(s)

BUTTLE, LOUISE GEORGINA

Examiner

Micah-Paul Young

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,8 and 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,8 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment of Papers Received: Amendment B dated 6/30/03.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3,4,8,10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwahashi et al (XP 000939130). The claims are drawn to a method of feeding fish cholesterol in order to improve their pigment.

The reference teaches methods for improving the pigment of fancy carp, by including cholesterol and a pigment into their feed compositions (Abstract). The carp were split into 10 separate groups with each given different amounts of various combinations of pigment and cholesterol. Group 8 was given a combination of astaxanthin and cholesterol (Table I). The researchers observed an increase in the intensity of the redness of the fancy carp after the feeding (Table 4). In Group 8 the accumulation rate of carotenoids was 1.41 % (Table 7).

What is lacking in the reference is physical form of the feed composition. This however would be obvious to a skilled artisan since most feed compositions are presented in pellet, of tablet form. Also the concentration of cholesterol is slightly higher than that of applicant.

Though the reference does not disclose the specific concentrations of the claimed invention,

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applicant is reminded that it is well within the level of ordinary skill in the art to find the optimal working ranges for a composition. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *See In re Aller*, 220 F.2d 454 105 USPQ 233, 235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredients. However, the preparation of various feed compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. *See In re Russell*, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).

With this in mind a skilled artisan would have followed the suggestions and teachings of the art. A skilled artisan would have been motivated by the teachings of Iwahashi to optimize the concentrations of pigment and cholesterol, in order to improve the flesh color of fancy carp, or any fish benefiting from increased pigmentation. These fish are more appealing to consumers, and are easier to market to consumers. It would have been obvious to one of ordinary skill in the art, at the time of the invention to follow these teachings and suggestions with an expected result of a method to improve pigmentation and feed composition to do so.

Response to Arguments

4. Applicant's arguments filed 6/30/03 have been fully considered but they are not persuasive. Applicant argues that:

- a. The reference does not improve the color of the flesh of the fish and nearly improves the color of the skin.

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Applicant is reminded that the claims are drawn to a method comprising feeding fish cholesterol, which is taught by the reference. A reference does not need to include all of the elements of the claimed invention in order to obviate it. The fish in the reference are fed cholesterol, which is the essential element of the claimed invention. Applicant is invited to provide evidence to the difference in the procedures, which lead to the distinctiveness of the claimed invention. It is the position of the examiner that since Iwahashi discloses the essential elements of feeding fish a diet of cholesterol to improve their pigment, the reference will continue to obviate the instant claims.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Micah-Paul Young whose telephone number is 703-308-7005.


The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Micah-Paul Young
Examiner
Art Unit 1615

MP Young


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
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